



March 21, 2017

House Judiciary Committee Testimony on HB3244 Juvenile Interrogations

Chair Representative Jeff Barker
Vice-Chair Representative Andy Olson
Vice-Chair House Democratic Leader Jennifer Williamson
Representative Chris Gorsek
Representative Mitch Greenlick
Representative Ann Lininger
Representative Bill Post
Representative Tawna Sanchez
Representative Sherrie Sprenger
Representative Duane Stark
Representative A. Richard Vial

Thank you for the opportunity to present testimony on HB 3244 regarding the use of deceit, trickery, and incentives in juvenile interrogations. We appreciate the committee's willingness to consider the devastating effects of improper interrogation tactics on criminal convictions. This problem extends to the interrogation of suspects, as well as to witnesses who may be induced to give incriminating statements against an innocent person. We understand that the committee is reviewing these tactics when used on persons under the age of 18. The same problem exists in interrogations on adults and is one of the leading causes of wrongful convictions across the country. We offer the following testimony based on studies of wrongful convictions generally, and not with specific application to juveniles who may be even more vulnerable to such tactics.¹

A. Innocent People Falsely Confess

While it may seem incomprehensible that anyone would confess to a crime that he or she did not commit, DNA exonerations across the country show that false confessions occur with disturbing regularity.² Even high-functioning adults with no mental illness can and do falsely confess to crimes that they did not commit.

¹ OIP credits the Innocence Project and the Montana Innocence Project with their assistance in preparing this testimony by sharing their *amicus* brief filed in *State of Montana v. Jasmine Nicole Eskew* (Supreme Court of Montana Case No. DA 14-0445) (2016).

² Innocence Project, available at: <https://www.innocenceproject.org/causes/false-confessions-admissions/>

Among the 349 DNA exonerations across the country to date, 28 percent (or 97 cases) involved false confessions or admissions by innocent people.³ But these 97 cases represent the tip of the iceberg because probative DNA evidence is unavailable in most cases. Although DNA exonerations reveal a shocking number of false confessions, the actual number is much higher. The National Registry of Exonerations has identified an additional 145 non-DNA wrongful convictions involving false confessions.⁴

Research shows that individuals who are innocent are more likely to waive their *Miranda* rights than guilty suspects because they feel they have nothing to hide, believe in a just world, and experience an “illusion of transparency,” overestimating the degree to which others see their true thoughts and emotions.⁵

Improper interrogation methods have been long-studied in the context of false confessions, and researchers are now beginning to address the same concerns when interrogations lead to false testimony from independent witnesses.⁶ Psychologists have done extensive research into the methods of interrogation and the use of psychological techniques that may result in eliciting false testimony.⁷

B. Background on Interrogation Methods Used on Suspects

From the late nineteenth century through the 1930s, police used “third-degree” methods of interrogation in which officers inflicted physical or mental pain and suffering on suspects to elicit confessions and other information.⁸ The methods ranged from direct physical assaults (e.g., simulating suffocation by putting the suspect’s head in water; beatings; kicking) to indirect suffering (e.g., prolonged confinement; deprivation of sleep; threats of harm).⁹ Experts found that the methods resulted in large numbers of coerced false confessions.¹⁰

³ Innocence Project, available at: <https://www.innocenceproject.org/all-cases/#false-confessions-or-admissions,exonerated-by-dna>. The total number of exonerations (DNA and non-DNA) to date is 2003.

⁴ National Registry of Exonerations.

⁵ Saul M. Kassin and Rebecca J. Norwick, *Why People Waive Their Miranda Rights: The Power of Innocence*, 28 LAW & HUM. BEHAV. 211, 215, 218 (2004).

⁶ Danielle M. Loney et al., *Coercive Interrogation of Eyewitnesses Can Produce False Accusations*, Journal of Police and Criminal Psychology (February 2015); Timothy E. Moore, *Shaping Eyewitness and Alibi Testimony with Coercive Interview Practices*, The Champion (October 2014).

⁷ Saul M. Kassin et al., *Police-Induced Confessions: Risk Factors and Recommendations*, 34 LAW & HUM. BEHAV. 3, 4 (2010); Saul M. Kassin et al., *Interviewing Suspects: Practice, Science, and Future Directions*, 39 LEGAL AND CRIMINOLOGICAL PSYCHOLOGY 15 (2010); Gisli H. Gudjonsson, *Psychological Vulnerabilities During Police Interviews. Why are They Important?*, 15 LEGAL AND CRIMINOLOGICAL PSYCHOLOGY 161 (2010).

⁸ Kassin, *Police-Induced Confessions*, *supra* n.7, at 6.

⁹ *Id.*

¹⁰ *Id.* (citing Wickersham Commission Report (1931). National Commission on Law Observance

From the 1930s to the 1960s, the “third-degree” method of interrogation was replaced by psychological interrogation techniques.¹¹ Psychological interrogation is the norm today in the United States, despite the Supreme Court’s recognition in *Miranda* that these methods are inherently coercive and “created for no purpose other than to subjugate the individual to the will of his examiner.”¹² The *Miranda* court found that, although not involving physical intimidation, the interrogation environment “carries its own badge of intimidation” that “is equally destructive of human dignity.”¹³

This is equally true of witnesses as it is of suspects. Indeed, where witnesses are threatened with prosecution or other harms if they do not cooperate (i.e., provide the information police want), there is no difference in status.¹⁴ The witness is interrogated as though he were the offender.¹⁵ Researchers have astutely remarked: “If coercive interrogation procedures can get people to surrender their own autonomy, how difficult can it be to coerce nonsuspects to implicate a suspect and by doing so cooperate with law enforcement?”¹⁶

C. Problems with Specific Interrogation Methods

Social scientists have isolated a number of problems arising from psychological interrogation methods, among them the following:

1. Deception fosters confusion and leads innocent suspects to feel trapped by the apparent weight of the evidence.¹⁷ Deception can involve a range of techniques, from the false evidence ploy to equally powerful lies, such as false statements about cooperation by others, cause of death or injury, or that a confession is necessary for non-investigatory

and Law Enforcement (1931). *Report on Lawlessness in Law Enforcement*. Washington D.C.: U.S. Government Printing Office).

¹¹ Kassin, *Police-Induced Confessions*, *supra* n.7, at 6.

¹² *Miranda v. Arizona*, 384 U.S. 436, 457, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

¹³ *Id.*

¹⁴ See, e.g., F.E. Inbau, J.E. Reid, J.P. Buckley, B.C. Jayne, *Criminal Interrogation and Confessions* 336-37 (2013) (5th ed.) (In this training manual for law enforcement, authors write: “Whenever a witness or other prospective informant refuses to cooperate because he is deliberately protecting the offender’s interests or because he is antisocial or antipolice, an investigator should seek to break the bond of loyalty between the witness and the offender or **accuse the witness of the offense and proceed to interrogate the witness as though he were actually considered the offender. . . . When all other methods have failed, the investigator should accuse the subject of committing the crime (or of being implicated in it in some way) and proceed with an interrogation as though the person was, in fact, considered to have involvement in the crime.** A witness or other prospective informant, thus, faced with a false accusation, may be motivated to abandon his efforts to protect the offender or to maintain antisocial or antipolice attitudes.”) (emphasis added).

¹⁵ *Id.*

¹⁶ Moore, *supra* n.6, at 35.

¹⁷ Kassin, *Police-Induced Confessions*, *supra* n.7.

purposes. The interviewer's presentation of false evidence, for example, can alter a subject's perceptions, beliefs, and memories. The United States Supreme Court has recognized that deception can induce involuntary confessions, although the Court has never prohibited such tactics.¹⁸ Other courts around the country have found that the use of deception may render a confession involuntary.¹⁹ The danger of using false evidence is that people start to distrust their own memories when confronted with trusted (albeit false) evidence.²⁰ The "proof" heightens the subject's anxiety level, inhibiting concentration and diminishing cognitive capacity.²¹

2. Prolonged interrogation can exacerbate distress and heighten the need to extricate oneself from the situation. Psychologists explain that, "under stress, people seek desperately to affiliate with others for the psychological, physiological, and health benefits" associated with fundamental human needs for social support.²² Sleep deprivation can increase the susceptibility to influence and impair decision-making abilities.²³ Interrogations that last for many hours with the subject in isolation increases anxiety and the incentive to escape by capitulation to interrogators.²⁴ The Court in *Miranda* recognized that this type of interrogation method "exact[s] a heavy toll on individual liberty and trades on the weakness of individuals."²⁵

3. Minimization occurs when investigators suggest to suspects that their actions were spontaneous, accidental, provoked, peer-pressured, or otherwise justifiable. Minimization leads people to infer that they will be treated with leniency upon a confession. Even implied leniency can induce confessions from innocent people in the same manner as explicitly communicated offers of leniency.²⁶ In *Dassey v. Dittmann*, a recent case involving a juvenile confession, a federal district court found that the "investigators' collective statements throughout the interrogation led Dassey to believe that he would not be punished for telling them the incriminating details they professed to already know."²⁷ The investigators' use of deception and implicit promises of leniency, together with Dassey's personal traits, rendered his confession involuntary.²⁸

¹⁸ See, e.g., *Miranda*, 384 U.S. at 455 n.24.

¹⁹ See, e.g., *State v. Eskew*, No. DA 14-0445, 2017 WL 772707 ¶ 25 (Mont. Feb. 28, 2017).

²⁰ Kassin, *Interviewing Suspects*, *supra* n.7, at 45.

²¹ Moore, *supra* n.6, at 37.

²² *Id.* at 35 (citing B.N. Uchino et al., *The Relationship Between Social Support and Physiological Processes: A Review With Emphasis on Underlying Mechanisms and Implications for Health*, 119 PSYCHOLOGICAL BULLETIN 488 (1996)).

²³ *Id.* at 45.

²⁴ *Id.*

²⁵ *Miranda*, 384 U.S. at 455.

²⁶ Saul M. Kassin & Karlyn McNall, *Police Interrogations and Confessions: Communicating Promises and Threats by Pragmatic Implication*, 15 LAW & HUM. BEHAV. 233, 248 (1991).

²⁷ 201 F.Supp.3d 963, 1003 (E.D. Wis. 2016).

²⁸ *Id.* at 1005.

4. Subjective questioning can alter memory or give subjects an easy way to capitulate. In a psychological interrogation, the police officer does most of the talking, especially in the early part of the interrogation.²⁹ The officer may deliberately or inadvertently convey details that alter the subject's version of events.³⁰ Courts across the country, including in Oregon, have begun to recognize the very real impact of suggestive questioning on witness memory.³¹ Even when a subject does not come to "remember" details of which he was not previously aware, that subject can easily adopt new information "leaked" through the interrogation as a way to escape that interrogation.³²

The prevalence of these risk factors in exoneration cases involving false confessions is further supported by the research of Professor Brandon Garrett. In the 66 DNA exonerations involving false confessions that Garrett studied, all 66 innocent suspects waived their Miranda rights, 61 (92%) were interrogated for more than three hours, and at least 22 were mentally impaired or mentally ill.³³ This research also showed that 94% of the false confessions studied contained non-public, inside information purportedly held back by law enforcement in order to ensure that the false confessor was the actual perpetrator. Since DNA established that these confessors were not, in fact, the actual perpetrators, the presence of this non-public, inside information in their false confessions suggests that law enforcement contaminated the false confession, either by leaking the information or providing it directly.

Social scientists also suggest that the ill-effects of psychological interrogation methods may be even more pervasive in witness interrogations, as opposed to suspect interrogations.³⁴ Witnesses are subjected to the same anxiety-producing techniques that cause suspects to search desperately for escape. Implicating another in the crime may be that means of escape and has few, if any, negative consequences for the witness who is then commended by police for his cooperation.

D. Recent Trends Rejecting Confrontation Interrogation Methods

Law enforcement agencies in other parts of the world, including England, have moved away from the highly-confrontational interrogation approach and, instead, developed a more objective, inquisitorial approach aimed at fact-finding rather than just obtaining

²⁹ Moore, *supra* n.6, at 35.

³⁰ *Id.*

³¹ *See, e.g., State v. Lawson*, 352 Or. 724, 743, 291 P.3d 673 (2012) ("The way in which eyewitnesses are questioned or converse about an event can alter their memory of the event. The use of suggestive wording and leading questions tend to result in answers that more closely fit the expectation embedded in the question. Witness memory can become contaminated by external information or assumptions embedded in questions or otherwise communicated to the witness.").

³² Moore, *supra* n.6, at 35.

³³ Brandon L. Garrett, *Contaminated Confessions Revisited*, 101 VA. L. REV. 395, 400, 402, 404 (2014).

³⁴ *Id.*; Loney, *supra* n.6.

confessions.³⁵ The “PEACE” model describes the five distinct parts to that approach—preparation and planning, engage and explain, account, closure, and evaluate—which was developed through a collaboration of police officers, psychologists, and lawyers.³⁶ Police officers using the PEACE model “never resort[] to threats, promises, and intimidation, or the kind of maximization and minimization tactics through which threats and promises are often implied.”³⁷

Likewise, Canadian police have abandoned the confrontation methods of interrogation (typically referred to as the “Reid Method,” named after its founder John Reid), which they found was unethical and unreliable, and moved toward a nonconfrontational “cognitive interview.”³⁸

In the U.S., the FBI, CIA, and Pentagon (under President Obama) developed the “High-Value Detainee Interrogation Group” to develop more reliable methods of noncoercive interrogations.³⁹ That group has also become a powerful funder of public research on interrogation methods in the U.S. and was the focus of a recent article by The Marshall Project, a copy of which is attached Exhibit 1.

Just two weeks ago, on March 6, 2017, a major player in law enforcement training in the U.S. (Wicklander-Zulawski & Associates) announced that it will stop training detectives on confrontation methods of interrogation using the Reid Method.⁴⁰ Wicklander-Zulawski made the change based on research and the many exonerations across the country that show the techniques produce false confessions and false evidence.⁴¹

We are encouraged by the Committee’s willingness to review the use of improper interrogation methods in juvenile cases. We support a broader review of interrogation techniques used on all suspects and witnesses and remain available to assist the Committee going forward.

Thank you.

Janis C. Puracal, Attorney
Brittney R. Plessner, Attorney

³⁵ Kassir, *Interviewing Suspects*, *supra* n.7, at 40, 46-47.

³⁶ *Id.* at 40.

³⁷ *Id.* at 47.

³⁸ Robert Kolker, *Nothing But the Truth*, The Marshall Project (May 24, 2016) (attached at Exhibit 1).

³⁹ *Id.*

⁴⁰ Eli Hager, *The Seismic Change in Police Interrogations*, The Marshall Project (March 7, 2017), available at: <https://www.themarshallproject.org/2017/03/07/the-seismic-change-in-police-interrogations#.jzEmi41qy>

⁴¹ *Id.*